SLESSER — INTRODUCTION TO TRADE UNION LAW

"The Reorganisation of Industry" Series: VI.

An Introduction to Trade Union Law

BY
HENRY H. SLESSER.

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VI.

AN INTRODUCTION
TO

Trade Union Law.

BY
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(BARRISTER-AT-LAW)
(Joint Author of "The Legal Position of Trade Unions,"
Author of "The Nature of Being," etc.)

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PREFATORY NOTE.

THIS little book is the outcome of three lectures delivered by Mr. Slesser at our Summer School in 1918. Apart from the verbal alterations and the touching-up of phraseology indispensable in the transformation of lecture notes into a book, the lectures are here reproduced in their original form. Mr. Slesser, after preparing his MS., very kindly presented it to the College, and the Council at once decided that they could not do better than to publish it as a new volume in the Reorganisation of Industry series.

THE connection between Trade Union law and the reorganisation of industry may, perhaps, at first sight seem a little remote. But the Trade Unions will play a very prominent part in helping to bring about the industrial changes of the future, and in any state of society we are likely to see for a long time to come they are certain to hold an important position. It is, therefore, essential that Trade Unionists should be acquainted with the relations of Trade Unions to the State and to the social and industrial system of which they form a part, and for this a knowledge of Trade Union law is indispensable.

A VERY important feature of Mr. Slesser's book is that it begins by stating in the clearest language some of the fundamental principles of law, for, as he says: "It is scarcely possible for Trade Unionists to hope to understand the law as it particularly affects them, unless they have some clear notion of the principles underlying the general law of the land." The study of Trade Union law is no very easy task, as Trade Union officials know, but they, as well as the members of Trade Unions generally, will find in Mr. Slesser's little book not merely an outline clearly and very attractively drawn, but a key to the wider study of the subject in the more elaborate works. Students of Trade Union law all over the country will, I feel sure, join with Ruskin College in the thanks which it offers to the author for his generous gift.

H. SANDERSON FURNISS,
Principal of Ruskin College.

Oxford, July, 1919.

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Trade Unions and the Law of Contract.

1. Introductory.

It is scarcely possible for a Trade Unionist to hope to understand the law as it particularly affects him, unless he has some clear notion of the principles underlying the general law of the land. Indeed, all particular studies of special branches of law demand such a general knowledge, but in the case of Trade Union law the need is even greater, and for this reason, that Trade Unions by their very nature and activities have been brought into conflict with the general law more than any other type of association, and, as their power has increased, special legislation has been passed for their protection, which must remain largely unintelligible to those who do not realise in what manner the general law interfered with their aspirations in the past.

Law as a whole can be distinguished from social convention or morality by the fact that it has attached to it what has been called a sanction—a consequence, that is, which may follow its obedience or disregard, enforceable by the executive of the state. Thus it is honourable to pay one's gaming debts, but if a man fails to do so the law will not compel him, for a gaming debt is only a "debt of honour," a social obligation. But if a man fail to pay a debt incurred for goods sold to him a judgment of the Court may follow which may result in the seizure of his property, or, in the case of contumacy, in the detention of his person.

Law thus regarded as an enforceable obligation may be divided into various classes, according to its origin or its nature

The origin of law may be found in two sources; first, law may be the creature of an Act of Parliament or of a regulation made by the authority of an Act of Parliament, or, secondly, it may arise through judicial decision. The first of these we call statute, the latter non-statute law.

2. Statute Law.

Statute law is to be found primarily in Acts of Parliament. Acts of Parliament are declared to be passed "by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled." Such laws are thus actually the decision, at most, of some one thousand three hundred men, of whom about half—the Commons—are elected to legislate. The Lords were formerly two separate estates—the Peers Spiritual (Archbishops and Bishops) and the Peers Temporal—but they are now to all intents and purposes one House. With the exception of the Bishops and four law lords, and perhaps a hundred Irish Peers and sixteen Scottish ones, who are elected from their respective special peerages, the rest, about four hundred, have been either created themselves or owe their right to legislate to hereditary descent.

Like the Commons, the House of Lords may originate Bills, which then pass to the other House for consent. The only limitation to this power is that by an old convention they may not originate or amend Bills dealing with finance, except with the sanction of the Commons.

By the Parliament Act of 1911, if they reject a Bill on two occasions against the wishes of the Commons it may become law without their consent.

The functions of the King, the third person of the legislative trinity, are now confined to a formal approval approving of the action of the Houses.

Acts of Parliament, passed as we have described, override all other kinds of law. That is what is meant by saying that Parliament is sovereign. But this does not mean that the Courts of Law will not "interpret" what Parliament has said. Parliament frequently passes legislation which is ambiguous in its meaning, or sometimes one Act actually contradicts another, so that, even in statute law, the Courts have the last word.

Apart from direct Acts of Parliament, it has been the practice of recent years to pass general Acts enabling Executive Officers or Boards to draft Orders under an Act which then themselves

have the effect of law, so long, that is, as they do not exceed in scope the powers which the Act has devolved upon them. Such statutory powers and Orders, such as those, for example, which have passed under the Munitions or Defence of the Realm Acts, afford examples of what is called sub-legislation.

The principal statutes immediately affecting Trade Unions to which we shall refer later are:—

The Trade Union Act, 1871;
the Trade Union (Amendment) Act, 1876;
the Trade Union Act, 1913;
the Trade Union (Amalgamation) Act, 1917; together with the Conspiracy and Protection of Property Act, 1875; and the Trade Disputes Act, 1906.

Of other statutes, we may notice the Employers' Liability Act, 1880; the Factory Act, 1901; the Workmen's Compensation Act, 1906; the National Insurance Acts; and Munitions of War Acts.

3. Non-Statute Law.

The earlier source of law, however, is not found in Parliament at all. Long before Parliament was founded the King's Judges were interpreting what they believed to be the common law of the land, and this interpretation of the common law continued, and continues to-day side by side with the interpretation of the law as laid down by Parliament.

Non-statute law may be divided into two classes, common law and equity. The former is older and more rigid, being the Judges' opinion of what the old common custom of the country is, while equity, which was administered by an official of the King—the Chancellor—and is now administered by the Judges, varied and mitigated the rigid uniformity of the common law in peculiar cases. Thus equity was more an exceptional, common law more the normal, law, but both Judges and Chancellor became guided by precedent and followed almost slavishly former decisions, so that really there was little difference between equity and common law. Finally, in 1873, by the Judicature Act, the two kinds of law were amalgamated, so that their differences need not further detain us.

Thus to-day we have both statute law and common law (including equity). Both enter into nearly every legal problem, and therefore in every case we have to consider:—

(1) What was the old common law?

(2) How has statute altered it?

(3) How have the Judges interpreted the law?

4. Case Law and Code Law.

It is only in the British Empire and in the United States that the Judges will follow in a subsequent case the earlier decision of an equal or superior Court, the decision of the House of Lords in this country, and of the Privy Council in Colonial appeals, being final and conclusive. On the Continent the laws are, as it is said, codified, and the decision of one judge, that a particular set of facts brings a case within one article of a code, will not prevent another judge placing the case under another article, with different results. The English law is more difficult to understand, as not only the statutes, which correspond to the code, have to be understood, but also all the legal interpretations. None the less, Continental law is really more uncertain, because although a code seems at first sight more definite than case law, the decision in each case depends much more upon the idiosyncrasy of the particular judge.

5. Civil and Criminal Law.

We must, therefore, endeavour to ascertain what is the position of Trade Unions at common law in order to find out to what extent the statutes to which we have referred have altered their legal status. But before we proceed to do this, it is necessary to consider the general law as it may be divided according to its nature rather than according to its origin.

From this standpoint the law falls broadly into two classes, the criminal and the civil law.

We have seen that what distinguished law from morality or social convention was the presence of a material sanction, and it is the difference in the nature of this sanction which distinguishes criminal from civil law.

Thus in the case of the criminal law, the action arises through what the common law or Parliament has decided is an offence against the State. The King is the prosecutor, though the prosecution may be on the institution of a private person, and the conviction results in penalty, either a fine or imprisonment. Civil law is concerned with the enforcement of a right or prevention of a wrong as between one person and another. Judgment against an unsuccessful party usually takes the form of damages, or an injunction restraining the commission of some act, or an order for specific performance. It is only in civil law that equity takes a part.

6. Contracts and Torts.

Although criminal law is concerned with offences against the State, a person who is injured by another's act may himself also have a remedy against the injurer in a civil action. Such an action is called a Tort, and the right to it arises altogether apart from any special agreement made between the parties. Thus every one at common law has generally a right to the security of his person, his property, and his reputation. If I assault him or take away his goods or his character, he may sue me in tort for assault, trespass, or libel respectively.

In these cases a corresponding liability will often exist to be prosecuted criminally for assault, larceny, or libel. In either case a general wrong is done, and the difference is in the method of its redress.

There is, however, another class of legal right which arises—not spontaneously, through the existence of rights and obligations which are always binding upon citizens—but through a voluntary arrangement made between persons. Such voluntary arrangements are called Contracts.

Now, in so far as torts and crimes arise apart from the direct wishes of the persons affected by them, no person can be liable unless he commit a specific tort or crime which has been so declared by common law or statute, but, since contracts are voluntary arrangements, made as the parties wish, the number of varieties of them is almost infinite. Another distinction

arising out of the difference between torts and contracts is that in the former case the damages which may be awarded are, as a rule, unlimited in amount, since they are of a semi-penal kind. On the other hand, in the case of actions for breach of contract, the damages are usually limited to the loss actually sustained by the breach.

7. The Law of Contract.

We must next pay a little closer attention to those voluntary agreements which are called contracts, for, while every contract is a voluntary agreement, it is not every agreement which will constitute a contract. Contracts may be unilateral or bilateral, that is, they may be of a form in which A agrees to do something for B, but B does nothing in return for A; or both A and B may mutually agree to do something for one another.

In the unilateral case there is, as lawers say, "no consideration"—that is, while A has bound himself to B, B has not given any corresponding undertaking to A, and, generally speaking, such agreements are unenforceable at law, unless they are specially "sealed, signed, and delivered." An agreement of a workman, therefore, to labour without receiving any wages is unenforceable for want of consideration, unless the workman agrees under seal to labour, which is not a very probable event.

But in the case of bilateral contracts, as where one agrees to work and the other to pay, there is consideration, and the contract is enforceable at law, and damages may be obtained for its breach. The law pays no attention to the adequacy of the consideration. A farthing would be sufficient on the part of the employer to bind the bargain, but some consideration, however small, unless the contract is under seal, must exist.

Next, in order to make a binding contract, it is essential that there be a **real agreement** between the parties. In certain contracts an agreement must be in writing, as when the agreement is a contract of service for more than one year. This obligation has been imposed by a statute as old as the time of Charles II., known as The Statute of Frauds. A few contracts must even be

under seal, but, by common law, contracts need not be in writing; indeed, they need not even be made by word of mouth, and in many cases a contract has been presumed from conduct or custom alone. Thus, without a word spoken, a man may enter an omnibus; here is an offer on the part of the omnibus company to carry passengers for hire which is accepted by the traveller entering the omnibus.

In some cases trade custom will decide the rate of wages to be paid when once the offer of employment has been accepted, or a special agreement may be made which will override a trade custom.

The right to notice terminating a contract may also be a matter of custom or special agreement. All these cases are examples of the multifarious nature of contracts.

Thirdly, a contract may have been agreed to by the **misrepresentation** or **deceit** of one party. This may be a reason for the Court setting the contract aside, or it may be obtained by what is called **undue influence,** as where a guardian persuades his ward, or a solicitor his client, to enter into a disadvantageous contract or by **duress.** These may, under the circumstances, be set aside by the Court. **Infancy, lunacy, and drunkenness** may also affect the validity of a contract.

It is very important for our purpose to realise that the economic position of the employer has never been regarded by the common law as a ground for setting aside as unfair the contract of service on the score of undue influence or duress.

This refusal of the common law has given rise to various methods whereby statutes have endeavoured to protect the worker. Thus at common law an employer may pay his workman in kind; by food, clothing, etc., instead of wages, or may impose upon him a liability to be fined. These powers are taken away, from the employer to some extent by the Truck Acts, but the power of the employer to make unfair contracts is not restricted at common law when once agreement has been proved. The economic circumstances which may have produced the agreement are not, as a rule, recognised by the common law.

8. Illegal and Unlawful Contracts.

Even when full agreement has been reached, however, there are **certain types of contract which the Courts will refuse to enforce.**

These contracts are said to be illegal or unlawful, and the grounds on which the Courts refuse to interfere are those of public policy.

Thus, by statute, contracts arising out of gaming transactions and horse racing cannot be enforced in a Court of law. The Courts will refuse to recognise them. So also at common law, an agreement to marry some other lady after the decease of a living wife is illegal, that is, it is unenforceable.

Unlawful contracts, on the other hand, are not only not enforceable, but are positively criminal; they are agreements to do an unlawful thing, and are known in law as conspiracies.

Having said this much, we must now apply the doctrine of illegality and unlawfulness of contract to Trade Union activity, for the work of Trade Unions is closely connected with one type of activity which is illegal, if not unlawful, at common law, namely, that which is known as Restraint of Trade.

9. Restraint of Trade.

Generally speaking, an agreement which forbids persons to dispose of their labour or their capital as they will, apart from the necessary limitation arising out of the actual terms of an existing contract, may be void and unenforceable, on the ground of its being in restraint of trade. Thus A may agree to work for B, and during that period he may bind himself not to work for another man, but for A to agree with B that after he has left B's employment he will not work for C, D, or E may be void as being in restraint of trade.

It is not every agreement in restraint of trade which is void. A, while working for B, may acquire special knowledge which B may wish to prohibit him from afterwards selling to C to B's detriment.

The question to be decided is whether the restraint exceeds what is reasonable.

The question of reasonableness, however, scarcely arises in Trade Union action, for nearly every Trade Union claims the right to interfere with employment and to prevent its members working where there is a trade dispute, or where proper rates are not paid, and such interferences constitute in nearly every case at common law an " unreasonable " restraint of trade.

It was decided as early as the reign of Henry V. that a contract imposing a general restraint of trade was void.

A Trade Union, of course, is a society having many objects: it is only the " trade " objects which are in restraint of trade, and so illegal. Whether these objects are so vital to the union as to make the whole society a society in restraint of trade, and thus make the whole union illegal, that is, an outlaw at common law, must depend upon the rules of the particular union in question.

As a matter of fact, however, of the Trade Unions whose legality has been threatened on this point—there have been over 30 cases in the High Court on this matter—in only four instances has it been held that the rules in restraint of trade were severable from the rest, so that the society **as a whole** was legal at common law, one of these being the old Amalgamated Society of Railway Servants, so that as a rule most Trade Unions are, at common law, illegal societies.

Where the lawful rules are so **inextricably mixed up** with rules that are illegal as being in restraint of trade, the society is **unlawful as a whole.** The principle on which an association may be pronounced unlawful depends (1) on whether the purposes for which the association is formed are unlawful; (2) on whether the means whereby its purposes are effected are unlawful; and (3) assuming either of the foregoing to be unlawful, on whether the illegality be of such a kind as to taint the whole constitution of the association and to make it an unlawful association. If rules which characterise what the object of the association is indicate that the object, or the method of pursuing it, is inconsistent with

public interest, then the character of such rules taken as a whole is such as to render unenforceable the individual rules, which would otherwise have been objectionable.

10. Trade Unions Legalised by Statute.

Assuming a society as a whole to be illegal at common law as being in restraint of trade, a condition which exists in nearly all Trade Unions, the consequence is to make the union an **outlaw** at common law.

The Trade Union Act, 1871, as we shall see, has, in fact, legalised Trade Unions for most purposes, but before that time no Court would entertain any action brought by a Trade Union, even if it were brought to recover property wrongfully taken from it by a defaulting secretary.

Now, however, the Trade Union Act, 1871, by Section 3, provides that:—

> "The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust."

So that a Trade Union can now enforce its agreements like any lawful association.

Moreover, in so far as there remains any doubt whether such agreements in restraint of trade are unlawful, in the sense of being criminal at common law, Section 2 of the same Act lays down that:—

> "The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such Trade Union liable to criminal prosecution for conspiracy or otherwise."

11. The Unenforceable Agreements.

Thus we see that, since the Act of 1871, Trade Unions may be regarded as lawful associations in so far as they have been legalised by statute. They remain, nevertheless, illegal at common law, and there is one particular kind of contract, namely, that between

the Trade Union and its members, or between one Trade Union and another, which is excluded from the legalising provisions of the 1871 Act, which is consequently still unenforceable at common law.

This exclusion is laid down in Section 4 of the 1871 Act, and is so important that it is here set out in full. It is as follows:—

"4. **Nothing in this Act shall enable** any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely—

"(1) Any agreement between members of a Trade Union as such concerning the conditions on which any members for the time being of such Trade Union shall or shall not sell their goods, transact business, employ, or be employed;

"(2) Any agreement for repayment by any person of any subscription or penalty to a Trade Union;

"(3) Any agreement for the application of the funds of a Trade Union—

"(*a*) To provide benefits to members; or

"(*b*) to furnish contributions to any employer or workman not a member of such Trade Union in consideration of such employer or workman acting in conformity with the rules or resolutions of such Trade Union; or

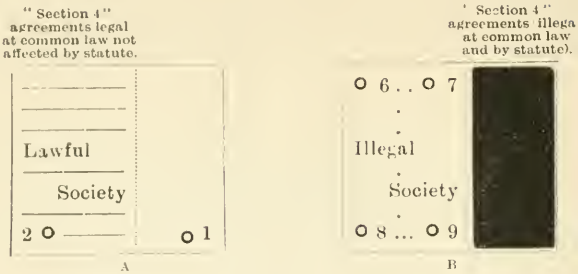
"(*c*) to discharge any fine imposed upon any person by sentence of a court of justice.

"(4) Any agreement made between one Trade Union and another;

"(5) Any bond to secure the performance of any of the above-mentioned agreements."

If, therefore, it can be shown that an agreement falls within the above class it is unenforceable **where the Trade Union is illegal as common law.** Where, however, the Trade Union as a whole is **legal as common law,** "Section 4" agreements **are as enforceable as any other contracts** of a lawful society, for in such cases the 1871 Act and, consequently, the exceptions of Section 4, do not arise.

The following diagram may make the matter clear:—



A is a lawful society, having only rules (1) and (2) in restraint of trade. They are not sufficient to taint the whole society. Here all contracts save those directly covering (1) and (2) are enforceable.

B is a society unlawful at common law by reason of the number and inextricability of its illegal rules. Here the 1871 Act legalises its contracts except those which are covered by Section 4, which remain, for want of a legalising statute, illegal and unenforceable.

We must now consider in more detail the unenforceable agreements set out above. It has been noticed in the first place that they are only unenforceable when the Trade Union is illegal at common law, but, even when it is so illegal, the Courts in certain cases have managed to obtain jurisdiction, which they are now as eager to exercise as they were formerly averse, by a very strict interpretation of the section.

We notice that the section begins "Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of **directly** enforcing damages," and the Courts have held that this word "directly" enables them, notwithstanding the section, to entertain actions for injunctions restraining the union from spending moneys on declarations reinstating expelled members—in other words, it is only **direct** actions for specific damages which the Court will not entertain. We may put it another way and say that the Court will still entertain the old **equitable** remedies, but will not act in common law proceedings for damages.

Without going too much into detail, the following summary gives the present position as decided by the Courts:—

I. An action to recover benefit money is unenforceable.

II. An action—

(1) claiming a declaration that—

(*a*) a member is entitled to participate in the enjoyment of the property and benefits of the union;

(*b*) this expulsion was invalid; and

(2) claiming an injunction against expulsion, and

(3) claiming damages, is unenforceable.

III. An action—

(1) claiming recission of a resolution of fine and expulsion, and

(2) claiming damages, is similarly unenforceable.

On the other hand:—

I. An action claiming an injunction against uplifting or applying the funds contrary to the rules, and

II. An action claiming a declaration that a resolution authorising strike pay is ultra vires and illegal would appear clearly to be enforceable.

It would seem, too, that—

III. An action claiming a declaration, reinstating an expelled member in his membership, is enforceable, though his rights as a member, in so far as affected by Section 4, are unenforceable.

IV. An action for the recovery of moneys on an account stated is enforceable.

An agreement in the rules to pay a dependent of a member, e.g., a wife, money after the member's death may be enforceable, for she is not "a member." But if she sues merely as her deceased husband's executor, and not in her own right, the agreement is unenforceable.

Moreover, while the above agreements are thus rendered unenforceable by the statute, it is doubtful if an agreement based upon them, or one of them, is excepted. Thus, if a Trade Union enter into a contract to pay a member a sum in the event of

his becoming totally incapacitated, and under that contract such member signs an agreement that he will repay the said sum in the event of returning to his work, then the subsequent agreement has been held to be a part or term of the original agreement. On the other hand, it has been held in Scotland, on appeal, that such subsequent agreement is enforceable, notwithstanding that the original was unenforceable, and that it is immaterial whether the original contract in the rules required the repayment in terms, or only the signing of an agreement to repay.

So strict is the rule concerning unenforceability by a member that even where he has nominated someone to receive his benefit, that person cannot sue for it.

It is important, therefore, that Trade Unions who do not wish to have constant litigation with their members, and who wish to take advantage of Section 4 of the 1871 Act, should see that their rules are illegal at common law.

12. Agreements Between Unions of Employers and Employed.

It will be remembered that by Section 4 (4) of the 1871 Act agreements between one Trade Union and another are unenforceable. As we shall see hereafter, Employers' Federations frequently fall within the definition of a Trade Union, and when they do they are usually illegal at common law. Consequently an agreement arranged between a Trade Union and an Employers' Federation by collective bargaining is usually unenforceable at law under Section 4 of the 1871 Act.

But there is another difficulty in the way of enforcing such contracts, a difficulty which involves some consideration of what is known as the law of agency. Generally speaking, a man only binds himself, but it is open to anyone in law to appoint someone else to make contracts on his behalf as his agent.

The most extreme example of agency is to be seen in a partnership, in which case each partner in the business is an agent for all the others who can bind them in the partnership business. But between this case and the giving of a limited specific authority to do a single act on a specific occasion, every variety

of authority may be given. The question arises immediately in the case of an agreement signed by the Executive Committee of the Trade Union and the Employers' Federation: how far had each the authority of their members to bind them?

Agency will not be presumed; it must be proved, either by writing, word or conduct like any other contracts, but in practice it will be very difficult to prove any specific authority by employers, who had not signed an agreement with their Executive Committee, to bind them individually, and an action founded upon such a contract for breach against an individual employer may very easily fail through a want of proof of agency. Probably in practice the best course to be taken to make such an agreement binding is as follows: let the Trade Union and Executive of the Employers' Federation agree that in the works of every employer affiliated to the Federation there shall be a book, signed by that employer, setting out the terms of the collective agreement. Then let it be arranged that each workman who is employed shall sign the book. In this way a direct contract will be established between each employer and each workman, and an action can be brought by each workman for breach of contract. In this manner all the difficulties both about "section 4" and the law of agency are done away with.

13. Conclusion.

It is scarcely necessary, in conclusion, to say much more about the law of contract as it affects Trade Unions. In a Trade Union the rules form the contract between the members and the society, and in most cases, as we have seen, such contracts are unenforceable.

Quite apart from section 4 of the 1871 Act, the Courts generally are averse from interfering in the internal affairs of societies, and they will only act where some proprietary interest is at stake. In the case of friendly societies there is a provision for compulsory arbitration. This does not exist in most Trade Union rules; if it did it is possible that the Courts might enforce the award where

they would not themselves hear the case on the ground that an enforcement of an award was not a **direct** enforcement of damages under section 4.

Thus the introduction of compulsory arbitration in disputes between members, though designed to keep the Law Courts **out,** might have the effect of letting them in, so full of pitfalls and difficulties is the law to the unwary.

However this may be, we must recognise that probably since 1871, and certainly since the Trade Union Act of 1913, of which we shall speak hereafter, a Trade Union is, to the extent that common law has been invaded by statutes, a lawful society competent to make binding agreements, and that, after a stormy youth, Trade Unions have now become respectable in the eyes of the law.

II.

The Legal Status of Trade Unions.

1. Introductory.

Since a Trade Union is a voluntary association which owes its existence to a series of mutual contracts between its members, contracts which find expression in the rules, it was proper that the study of Trade Unions in their legal aspect should commence from the contractual side.

It is next necessary to consider the Trade Union as a whole, as a society rather than from the standpoint of its internal and external agreements. Apart from the question of restraint of trade—a matter which, since the Act of 1871 (with the exception of section 4 of that Act), is of only historical interest—Trade Unions may be regarded as a type of legal association known as a voluntary society. Such societies, in law, occupy a position midway between one individual person and that artificial "person," the creature of law, the corporation.

An individual person, as a rule, may sue and be sued in a Court of Law or hold property; so also may the Corporation. What, we have to ask, is the position of the Trade Union, collectively regarded, in this respect?

The status of the Trade Union is easier to understand when once the position in law of the Corporation is understood. The incorporated society, whether incorporated by charter, by royal prerogative, or by or under an Act of Parliament, can own property, or sue, or be sued, quite irrespective of the individual members composing it, which members indeed in many cases (a limited liability company is an example) change from day to day. Its acts are testified through its seal, and it is to all intents and purposes a complete "person" of its own.

Now a Trade Union, like a corporation, has a fluctuating membership, but, unlike the incorporated body, it has at common law no personality. How then can it hold property, conduct actions, or function generally as a legal entity?

The most urgent need of such a society with a fluctuating membership is to acquire a legal stability. This it cannot do directly by incorporation, but there is nothing to prevent such a society vesting its property in Trustees, who are required under the terms of the trust (to be found in the case of a Trade Union in the rules) to administer the funds in accordance with the trust obligations. In this way a Trade Union, club, or other voluntary society acquires a permanence which a mere aggregation of members would not possess.

It must also be noted that it is by reason of the possession of property that the Court will recognise these trusts and the entity of such a voluntary association.

We may take, for example, two types of cycling club. The first has a club-house and other assets vested in trustees; to such a club the Courts will grant recognition. The other club is merely an association of members who agree to go cycling together on certain days; this type of club, for want of proprietary status, would lack recognition in law.

A Trade Union, of course, is of the proprietary type, and hence conforms to the general position of a recognised voluntary association.

A Trade Union under the Trade Union Act of 1871 may register, and in such a case the property of the union becomes automatically vested in Trustees, who may bring and defend actions in the name of the union. But there is nothing to prevent a similar trust being created in the case of an unregistered Trade Union, which, it must be remembered, is by statute quite as lawful as a registered one. The only difference is that in the latter case a trust must be created by the rules; in the former it is created by statute, which stipulates for the insertion of a Trustee rule before the society can be registered.

2. The Quasi-Corporate Position of Trade Unions.

We have spoken so far of Trade Unions as if they were in the same position as other voluntary societies, but, while in many respects they do possess the same status as clubs, societies, etc., it must not be forgotten that they differ from such societies in being illegal at common law. As Lord Farwell said in the Taff Vale case, "A Trade Union is neither a corporation nor an individual, nor a partnership between individuals. It is an association of men which almost invariably owes its legal validity to the Trade Union Acts, 1871-76," and "the Legislature, in giving a Trade Union the capacity to own property and the capacity to act by agents has, without incorporating it, given it two of the essential qualities of a corporation."

On the other hand, we have Lord President Inglis saying in Scotland that "Trade Unions remain voluntary associations of which the law can take no special cognisance as collective bodies, and it is provided by the fifth section of the 1871 Act that the Acts relating to friendly societies and industrial and provident societies, and the Companies Acts shall have no application to Trade Unions, the object apparently being to make careful provision that they should not have any corporate existence or capacity whatever."

Though a Trade Union is not a corporation the Courts once held that it can be made collectively liable for its acts.

"If the Legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken to have impliedly given the power to make it liable in a court of law." (Taff Vale case)

In the case, moreover, of Amalgamated Society of Railway Servants v. Osborne (1910) it was held that, though the Act of 1871 does not make a Trade Union a corporation, yet the Trade Union Acts constitute, **as it were,** a charter of incorporation; they render things lawful which would otherwise be unlawful, **and what is not within the ambit of the statute is prohibited to a Trade Union.**

3. The Ultra Vires Doctrine and the Osborne Case.

Now, while an individual is free to do in law anything which is not unlawful, a corporation can only do acts permitted under its charter or articles. To act beyond this is, as is said, "ultra vires," beyond its powers. The L.C.C., for example, which is given powers to run trams, acts ultra vires in running omnibuses to feed the trams, and the decision in Osborne's case, whether a Trade Union is a corporation or not, placed it within the ultra vires rule of corporations. The difficulty the Court had to contend with in attempting to restrict the powers of Trade Unions arose from two facts: (1) They were not corporations, and (2) even if they were, they possessed nothing comparable to articles or charter to show how their powers were in fact limited.

The House of Lords, however, got over these difficulties very skilfully. In the first place they pointed out that companies, **whether incorporated or not,** owing their constitution and their status to Act of Parliament, and having their objects and powers defined thereby, cannot apply their funds to any purpose foreign to the purposes for which they were established, or embark on any undertaking in which they were not intended by Parliament to be concerned.

It was pointed out that wherever a corporation is created by Act of Parliament with reference to the purposes of the Act, and solely with a view to carrying those purposes into execution, not only the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions; and this principle is not confined to corporations created by special Acts of Parliament. It applies with equal force in every case where a society or association, formed for purposes recognised and defined by an Act of Parliament, places itself under the Act, and by so doing obtains some statutory immunity or privilege. This law applies to all companies created by any statute for a particular purpose.

It was said that a definition which permitted Trade Unions to do the particular things named in the statue, and in addition all things not in themselves illegal, would be no definition at all. The question is whether the Legislature has conferred upon registered Trade Unions, expressly or by fair implication, a specific power, and the test as to whether a Trade Union has or has not any specific power is to be proved in the answer to the question: "Does the power merely provide a method of conducting business, or is it a power making the society a thing different from that which is specified in the Act and meant by the Act?"

In this way, by comparing a Trade Union to a company created by statute and treating the 1871 Act as an enabling charter, the first difficulty was got over, and Trade Unions, though not incorporated, were held limited to the 1871 Act.

The next difficulty was to find their powers in that Act; this was done by holding that the definition of a Trade Union in the Acts of 1871-1876 was a "limiting and exhaustive definition," so that whatever power the Trade Union sought to exercise which was not included in that definition was ultra vires and illegal. When we turn to the definition in question we find that it is as follows. It is **"the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business." This last brings many employers' federations under the head of Trade Unions.**

This definition was then held not to include political activities, nor would it in fact include many other activities, such as running a newspaper. It is even doubtful whether it would include the provision of benefits to members.

4. The Present Position.—Trade Union Activities and their Powers Defined.

However this may be, the Osborne case has now been in a large measure reversed and its effects have been mitigated by the Trade Union Act, 1913, for, by Section 1 (1) of that Act, subject to special provisions as to the political activities, of which we shall

speak hereafter, " A Trade Union may now apply its funds to any lawful object or purposes for the time being authorised under its constitution."

A Trade Union, therefore, may now have any number of objects if its rules provide for them, for it is no longer restricted to the definition of objects in the 1876 Acts. This very multiplicity of objects, however, makes it difficult to say whether a particular society is in fact a Trade Union or not. When a Trade Union was limited to the powers under the 1876 Act it either was or was not a Trade Union according to whether its objects were or were not within the definition therein contained. At the present time, owing to the enlargement of its powers, a society may have some objects which are clearly Trade Union objects, and some which are not, and a doubt may arise in such a case as to whether a particular society is or is not a Trade Union.

The 1913 Act has therefore made provision for meeting this difficulty. It defines the old objects before 1913, namely, those contained in the 1876 Act, above set out, as statutory objects, to which it adds " the provision of benefits to members "—a power omitted, as we have seen, from the earlier Acts—and calls this group the " statutory objects." It then goes on to say that only a society whose **principal** objects are statutory objects is to be deemed to be a Trade Union.

Furthermore, the Act provides that a society when it is registered is to be " deemed to be a Trade Union "; that is, it need not prove in any case that its principal objects are statutory objects. It goes on to allow an unregistered Trade Union to obtain a certificate that it is a Trade Union without registering, in which case also the Courts will deem it to be a Trade Union. But an unregistered or uncertificated Trade Union may have to prove from its rules that its principal objects are statutory objects, if it wishes to be regarded in law as a Trade Union.

5. Political Action.

The exception to the general power of Trade Unions to conduct any activities which their constitution permits—that of political action—must next be considered.

Section 3 of the Trade Union Act, 1913, provides that no Trade Union may apply its funds directly or indirectly in furtherance of the following political objects:—

(*a*) In payment of expenses incurred by a candidate or prospective candidate for election to Parliament or to any public body which has power to raise money by means of a rate; or

(*b*) the holding of any meeting or distribution of literature or documents in support of any candidate or prospective candidate; or

(*c*) the maintenance of any Member of Parliament or any person holding a public office; or

(*d*) the registration of electors or the selection or a candidate for Parliament or any public office; or

(*e*) the holding of political meetings of any kind, or the distribution of political literature or documents, except where the main purpose of such meetings or distribution is the furtherance of statutory objects;

unless—

(1) The furtherance of such political objects has been approved as an object of the union by resolution passed on a majority ballot of the members of the union. The resolution takes effect as if it were a rule of the union, and as such may be rescinded.

On the adoption of the resolution notice must be given to the members of the union, informing them that each member has a right to be exempt from contributing to the political fund, and that a form of exemption notice can be obtained by or on behalf of a member, either by application at, or by post from, the head office or any branch office of the union, or at the office of the Registrar. This notice to members must be given in accordance with the rules of the union approved for the purpose by the Registrar, who will have regard in each case to the existing practice and to the character of the union

The ballot must be taken in accordance with the rules of the union, to be approved for the purpose by the Registrar, but the Registrar must not approve any such rules unless he is satisfied

that every member has an equal right and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured, and unless

(2) Rules, to be approved by the Registrar, are in force providing:—

(*a*) That any payments in the furtherance of the political objects are to be made out of a separate political fund, and for the exemption of any member of the union from any obligation to contribute to such a fund, if he gives notice in accordance with the Act that he objects to contribute. A member of a Trade Union giving notice that he objects to contribute, so long as his notice is not withdrawn, remains exempt from contributing to the political fund of the union as from the 1st day of January next after the notice is given, or, in the case of a notice given within one month after the notice given to members on the adoption of a resolution approving the furtherance of political objects, as from the date on which the member's notice is given.

Effect may be given to the exemption of members to contribute to the political fund of a union either by a separate levy of contributions to that fund from the members of the union who are not exempt, or by relieving any members who are exempt from the payment of the whole or any part of any periodical contributions required from the members of the union towards the expenses of the union, and in that case the rules shall provide that the relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment, and for enabling members of the union to know as respects any such periodical contribution whether or not it is intended in whole or in part as a contribution to the political fund of the union.

Since the obligation is limited to paying money **out** of a separate fund, provides thereafter for giving exemption to members to contribute, it appears that, once the ballot is carried, the union may transfer moneys from the general to the political fund if they give the members exempted a right to receive back their

share of the money transferred. The question, however, has never been decided in the Courts.

There is a provision in the Act that, if any member of a Trade Union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Registrar of Friendly Societies, and the Registrar, after giving the complainant and any representative of the union an opportunity of being heard, may, if he considers that such breach has been committed, make such order for remedying the breach as he thinks just under the circumstances; and any such order shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction (in Scotland by interdict), and on being recorded in the County Court (in Scotland the Sheriff Court), may be enforced as if it had been an order of such Court.

How far this provision is enforceable in cases where Section 4 of the 1871 Act applies and excludes jurisdiction is very doubtful. There have been no decisions so far under it. It will be noticed that, though the Registrar has power to make an order, he has no power to compel the attendance of witnesses or to administer an oath.

There is also power under the Act for several Trade Unions to group themselves together into one political unit, such as the Miners' Federation. An interesting question would arise as to the liability of the parent federation if a component union forced an exempted member to pay the political contribution. The point has not yet been decided, though the issue has been raised on the pleadings in one case.

Finally, we have to note that the approval of political rules, when once the ballot has been carried, may be given through a recognised delegate meeting, and that the members of such a delegate meeting may alter the rules for political purposes, even when power to alter rules does not exist in the rules.

6. The Registered Union.

The registered Trade Union is created by the Act of 1871; it is no more and no less lawful than an unregistered union, but certain special rights and duties are attached to a Trade Union by

registration. Any seven or more members of a Trade Union may register their Trade Union by subscribing their names to the rules of the union, and otherwise complying with the provisions of the Trade Union Acts and the regulations made under those Acts with respect to registration. Unless the rules provide to the contrary, any person over the age of 16 may be a member of a Trade Union, and is, therefore, competent to subscribe. But if the Registrar has reason to believe that the applicants have not been duly authorised by the Trade Union to make the application, he may require evidence from them to that effect.

As regards the regulations respecting registration, the Home Secretary makes the regulations respecting registration and the forms to be used for the purpose of registration.

In order to register:—

(1) An application to register the Trade Union, together with printed copies of the rules and a list of the titles and names of the officers, must be sent to the Registrar under this Act.

(2) The Registrar, upon being satisfied that the Trade Union has complied with the regulations respecting registration in force under this Act, registers such Trade Union and such rules.

(3) No Trade Union must be registered under a name identical with that by which any other existing Trade Union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public.

(4) Where a Trade Union applying to be registered has been in operation for more than a year before the date of such application, there must be delivered to the Registrar, before the registry thereof, a general statement of the receipts, funds, effects, and expenditure of such Trade Union, as if it were the annual general statement.

(5) The Registrar upon registering a Trade Union issues a certificate of registration, and this is conclusive evidence under the 1913 Act that the society is a Trade Union.

Specific obligations are laid down in the Schedule of the 1871 Act as to subjects with which the rules must deal—obligations which do not arise in the case of unregistered unions.

The following matters must be provided for by the rules of Trade Unions registered under the 1871 Act:—

1. The name of the Trade Union and place of meeting for business.

2. The whole of the objects for which the Trade Union is to be established, the purposes to which the funds thereof shall be applicable, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such Trade Union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the Trade Union by every person having an interest in the funds of the Trade Union.

Other obligations of a registered Trade Union are to send the Registrar annually before 1st of June a general statement of its receipts, funds, effects, and expenditure, showing the assets and liabilities at that date, and the receipts and expenditure, with the respective items thereof, during the year preceding. The statement must be prepared and made out up to such date, in such form, and with such particulars as the registrar may require. Every member of and depositor in any such Trade Union is entitled, on application to the treasurer or secretary of the Trade Union, to receive a copy of the general statement, free of charge. Together with the general statement a copy of the rules of the Trade Union must be sent, with a copy of all alterations of rules, new rules, and changes of officers made by the Trade Union during the year.

A registered Trade Union and every officer thereof, failing to comply with or acting in contravention of these requirements, are severally liable to a penalty not exceeding £5 for each offence. Every person who wilfully makes or orders to be made any false entry in or omission from a general statement, or in or from the return of such copies or alterations of rules, is liable to a penalty not exceeding £50 for each offence.

Generally, a Trade Union which fails to give any notice or send any document which it is required to give or send to the Registrar, or every person who, being bound by the rules thereof to give or send the same, likewise so fails, is liable to a penalty of not less than £1 and not more than £5, and to an additional penalty of the like amount for every week during which such failure continues.

There is also a statutory obligation on the officers to account to the society, but this can easily be effected in an unregistered society by rule.

Thus a Trade Union by registering attaches itself in a very real way to the State through the person of the Registrar, and in this way incurs obligations to disclose its resources to the State, employers, and the members of rival unions, if any such exist. The corresponding advantages of registration scarcely seem to compensate sufficiently for the incurring of these heavy liabilities. A registered Trade Union, it is true, is recognised by all the world as a genuine Trade Union, but so also is a certificated one under the 1913 Act, which incurs by certification none of the liabilities attaching to registration. A registered Trade Union is exempt from income tax on provident benefits only; but since in most cases the provident and industrial funds are mixed, this is not, in practice, a very valuable concession. It may hold land, **not exceeding one acre,** but apparently—since 1913 at any rate—an unregistered Trade Union may hold land to any extent. It has the offices of trustee and treasurer created for it by statute, but most Trade Unions would prefer to do these things for themselves by rule.

It can prosecute its defaulting officers summarily by a special remedy, but since 1871 any other union can bring prosecutions

for larceny or falsification of accounts or embezzlement. In conclusion, the advantages of registration are hypothetical, except those relating to income tax on provident benefits and deposits under the Assurance Companies Acts, the obligations very real. And such advantages as exist can nearly all be acquired by a certificate under the 1913 Act, which does not involve the consequences of registration.

7. The Registrar and the Powers.

The Registrar, both for purposes of registration and certification, is the Chief Registrar of Friendly Societies; he has assistants in Scotland and Ireland.

Under the 1913 Act considerable powers are given to the Registrar. No combination may be registered as a Trade Union unless, having regard to the constitution of the combination, its principal objects are, in his opinion, "statutory objects," and the Registrar may withdraw the certificate of registration of any such registered Trade Union if the constitution of the union has been altered in such a manner that, in his opinion, the principal objects of the union are no longer statutory objects, or if, in his opinion, the principal objects for which the union is actually carried on are not statutory objects.

The words of this section are very wide, and appear to give the Registrar considerable judicial power. It would seem that, in considering the withdrawal of a certificate of registration, though not in granting it, he may **now** inquire into the **actual conduct** of the Trade Union, as well as into its constitution. Under the 1871 and 1876 Acts the Registrar must cancel the certificate of registration if he is satisfied that the purposes of a Trade Union are or have become unlawful, but apparently he has no power under these statutes to cancel the certificate if a Trade Union, having lawful purposes, acts unlawfully, except when (after due notice from him) it wilfully violates the Trade Union Acts. As we have pointed out, any unregistered Trade Union, without registering, may at any time apply to the Registrar for a certificate that it is a combination, which is a Trade Union; and if the Registrar, having regard to the constitution of the union

and the mode in which the union is being carried on, is satisfied that the principal objects of the union are statutory, and that the union is actually carried on for those objects, he must grant such certificate. A difficulty may, however, arise where a new union desires certification, as in this case it is difficult for the Registrar to decide how the union is actually carried on.

The Registrar, on application made by any person, may withdraw such certificate, if satisfied (after giving the union an opportunity of being heard) that the certificate is no longer justified. The Registrar's powers are thus greater in the case of certified than of registered unions, for in the latter case, both in granting and withdrawing a certificate, he may have regard not only to the constitution of the union, but also to the mode in which it is carried on.

8. Amalgamation and Dissolution.

In conclusion, two other matters call for consideration—amalgamation and dissolution. As to amalgamation, **by the Trade Union (Amalgamation) Act, 1917, Trade Unions may amalgamate on a vote of not less than 50 per cent. of the membership of the Trade Union if there is a majority of at least 20 per cent. of those voting in favour of amalgamation.** It is not very clear whether Trade Unions, in addition to this power, need a special rule authorising amalgamations. It is therefore safer to have one. It should be noted that amalgamation probably necessitates a new political ballot, as a new union is created, and the 1913 Act does not provide for the contingency.

The rules of every union must provide for the manner of dissolution. Notice of dissolution under the hand of the secretary and seven members, in a form prescribed, must be sent within 14 days after the date of notice to the central office (in the case of registered Trade Unions doing business exclusively in Scotland or Ireland, to the Assistant Registrar of Scotland or Ireland, respectively), and such notice of dissolution must be registered by the Registrar.

It is not very clear how far the rules as to notice apply to unregistered Trade Unions.

III.

Trade Unions: Torts and Crimes.

1. Introductory.

It will be remembered how we have already had occasion to distinguish between contracts, torts, and crimes. The first subject in relation to Trade Unions has already been examined; we have still to consider the position of Trade Unions with regard to torts and crimes.

The principal tort which concerns Trade Unions is that which arises through the interference with or prevention of contracts between workmen and employers.

Where workmen strike after a contract has been duly ended by notice, no breach of contract arises, and consequently no tort. But while it may be only a breach of contract for A and B to sever their contract unlawfully, a person who is not actually a party to the contract, such as a Trade Union official, may commit a tort in bringing about a breach of a contract, or in preventing the formation of one. The damages in this case, it will be remembered, are not limited, as in the case of breach of contract, to the damage actually sustained, but as a tort has been committed, may be such an amount as a sympathetic jury may be disposed to give. Moreover, it will be remembered that an employer is liable in tort for the acts of his servants or agents done in the course of their duty, and, consequently, at common law, not only the Trade Union official but the society's funds may be liable where the official calls out men in breach of a contract, or without just excuse interferes with the formation of one.

This decision, which would cripple Trade Union activity and finance to an enormous extent if it were still law, was laid down in the famous case of the Taff Vale Railway Company and the Amalgamated Society of Railway Servants (1901), and had not the common law been altered by statute the effects would have

been extremely serious. Now that the common law has been varied by the Trade Disputes Act, 1906, the whole question is not so important as it once was, but, nevertheless, owing to the limitations laid down in that Act and the decisions upon it, it is still necesary to realise what the common law is, as it will still operate where the Trade Disputes Act does not apply.

2. Liability in Torts for Unconcerted Interference.

The liability for interference in contracts may vary according to whether it is **an interference of several people** acting in combination, as frequently happens in the case of a Trade Union, or an interference **by a single individual.** To take the simpler case first. By the Trade Disputes Act, 1906, Section 3:—

"An act done by **a person** in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills." It will be noted that the protection is expressly limited to acts done "in contemplation or furtherance of a trade dispute," and it is therefore convenient at this point to consider exactly what these words mean.

The words "trade dispute" are defined by the 1906 Act as any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person, and the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises. The words "trade dispute," as also the words "in contemplation or furtherance," immediately preceding them in the Act, must be construed strictly. To constitute a "trade dispute," a mere personal quarrel or grumbling or an agitation will not suffice. It must be something fairly definite and of real substance. In order that a dispute may be a trade

dispute at all, a workman must be a party to it on each side, or a workman on one side and an employer on the other. The term " trade dispute " does not necessarily include every case of personal difference between any one workman and one or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded, it may be, upon personal animosity, may come to be a subject in which sides are taken, and may develop into a situation of a general aspect containing the characteristics of a trade dispute, but until it reaches that stage a " trade dispute " does not necessarily exist.

The words " in contemplation or furtherance " do not necessarily embrace every act done by a person with a view to bringing about a trade dispute. To contemplate a trade dispute is to have before the mind some objective event or situation, but does not mean a contemplation, meditation, or resolve in regard to something as yet wholly within the mind of a subjective character. And the term " furtherance of a trade dispute " must apply to a trade dispute in existence, and the act done must be in the course of it and for the purpose of promoting the interest of either party or both parties to it. The words " in contemplation or furtherance " mean either that a dispute is imminent and the act is done in expectation and with a view to it, or that the dispute is already existing and the act is done in support of one side to it. It is help, assistance, and encouragement to a dispute that the Legislature apparently had in view when it used the words " in furtherance." When the words " in contemplation " are used in juxtaposition with the words " in furtherance," had not the Legislature in view a dispute which must—at the time the act was done that it (the Legislature) designed to protect—at all events have been thought of by some person who should be a party when it finally arose?

Moreover, it has recently been decided that a dispute between two Trade Unions as to whether a member of one ought not to be a member of the other, is not a trade dispute within the meaning of the Act, inasmuch as it is not a dispute " connected with employment as such." (Valentine v. Hyde.)

Apart from the act, the liability for causing a breach or preventing a contract will only arise **where there is no sufficient justification** for the interference. It may, however, safely be said that the prosecution of a labour dispute will rarely, if ever, be regarded as a sufficient justification, apart from the 1906 Act.

It must always be remembered that, where no **contract** or **other legal** right is interfered with in any way, though the act done by the defendant may be one both calculated and intended to inflict upon the plaintiffs great loss and suffering, it is not actionable. It does not matter what the particular act interfered with is, so long as it is not one which the person doing it has a definite legal right by contract, or by common law or statute law to do. For, under these circumstances, if mere evil motive were to make that unlawful which would otherwise be lawful, or if, to do intentionally that which is calculated in the ordinary course to damage another, were actionable, it would lead to singular results. One who committed an act, not in itself illegal, but attended with consequences detrimental to several other persons, would incur liability to those he intended to injure, and the rest of them would have no remedy. Threats, however, may constitute illegal means. So also may pressure and moral coercion of numbers. And, therefore, it may be actionable to interfere with a man's employment, even where no breach of contract is caused, if threats or improper pressure are employed, otherwise, one person interfering **alone,** where there is no breach of contract, could not be sued.

3. Liability in Tort for Concerted Interference.

It is provided by Section 1 of the Trade Disputes Act that, where a trade dispute is in contemplation or furtherance, an act done in pursuance of an agreement or combination is not actionable unless the act would be actionable if done without any such agreement or combination and even where no dispute exists. At common law, on the other hand, it appears clear from recent decisions that, **where no action will lie against an individual** for interference without breach of contract, an action **may** lie against a combination for similar acts done by them collectively.

Strikes and similar combinations to better the conditions of labour are not in themselves, it is true, unlawful at common law. There is no foundation for the proposition that strikes are per se illegal or unlawful by the law of England. It is true that occasional dicta are to be found to the effect that combinations to better the conditions of labour are unlawful at common law, but the Courts have never accepted the law thus laid down, and eminent judges have expressed views to the contrary. Thus, where broken contracts have expired, those who help to maintain the strike by supporting the workmen or in refusing to enter new contracts are not doing anything illegal. But, apart from the Trade Disputes Act, 1906, to procure by combination a continuing breach of contract is unlawful. While there is nothing illegal in a strike nor in contributing to the support of strikers, it may be attended with circumstances, such as breach of contract or intimidation, which makes it illegal.

But combinations which result in injury to another, even where no contract is broken, and there is no other coercion or threat, **may** be unlawful at common law when the object of the combination is injury either to the employer or his workmen; and, if the injury is effected, an action may lie for conspiracy. The question to be decided in each individual case is: How far the resulting injury is ancillary to a legitimate combination and how far the combination exists for the purpose of injury. When the object of the combination is to benefit oneself, it can seldom, perhaps it can never, be effected without some consequent loss or injury to someone else. The mere fact that the effect of combination is injurious does not make it unlawful. The act complained of must amount to the violation of a right, such as the right of everyone to dispose of their labour as they will; no conspiracy is known to the law which has not for its object the accomplishment of an unlawful act, or which does not involve the use of unlawful means.

But, though combination in itself is not unlawful, yet, as a combination for the purpose of causing injury may be more effective than unconcerted coercion, in this sense it may be evidence of an unlawful intention; for a combination may be

oppressive or dangerous which, if it proceeded only from a single individual, would be otherwise, and the very fact of combination may show that the object is simply to do harm, and not merely to exercise one's own rights; a man may resist without much difficulty the wrongful act of an individual, but it is a very different thing when one man has to defend himself against many combined to do him wrong. It is, however, the damage wrongfully done, and not the conspiracy, which is the gist of the action. An apparent conflict is thus presented between two rights that are equally regarded by the law—the right of the employer to be protected in the legitimate exercise of his trade, and the right of the employed to dispose of their labour as seems best to them, provided they do no harm to others. We have to consider what is the legitimate boundary. This the final result of the two famous cases of Allen v. Flood and Quinn v. Leatham.

Whether a trade dispute exists or not, the Trade Union itself, apart from its officials, is protected from all actions for tort, whether brought for torts committed by the Trade Union or by officials acting on its behalf. This immunity extends beyond the cases of trade disputes to liability for libel. Thus the net result is that the only outstanding liability is that of the official personally for torts not connected with a trade dispute.

4. Trade Unions and the Criminal Law.

Whatever may have been the position in the past, it is now practically clear that the purposes of a Trade Union, by reason merely that they are in restraint of trade, are not unlawful, so as to render any member of such Trade Union liable to criminal prosecution.

Moreover, an act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

Apart from conspiracy, however, there still remain those cases of interference during disputes which amount to criminal acts.

These liabilities are laid down in the Conspiracy or Protection of Property Act, 1875, as amended by the Trade Disputes Act, 1906, and are as follows:—

Every person who with a view to compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

(1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or

(2) persistently follows such other person about from place to place; or

(3) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

(4) watches or besets the house or other place where such other person resides, or works, or carries on business or happens to be, or the approach to such house or place; or

(5) follows such other person with two or more other persons in a disorderly manner in or through any street or road;

shall, on conviction thereof by a Court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding three months, with or without hard labour.

These liabilities are in substitution for and not in addition to any liabilities with the like offences at common law. It gives "in respect of some nuisances, as to which there was already a civil remedy, a summary remedy by summons before the magistrate," and "criminal prosecutions under it are limited to cases so tortious as to give a civil remedy also." Where immunities have been conferred by the statute, as in the case of peaceful communication of information, "to hold that the very same acts which are expressly legalised by statute remain, nevertheless, crimes punishable by the common law, would be contrary to good sense and elementary principle." The section creates only one offence, the various sub-headings merely setting out different ways of committing the offence.

A person upon whom compulsion is exercised is protected, whether he be a master or a workman. The compulsion complained of must be done wrongfully and without legal authority. The word "wrongfully" is not superfluous; the Legislature inserted the word "wrongfully" expressly, because it did not wish the Court to put that restrictive meaning on the word "compel." To issue bills asking men not to work during a strike is not a compulsion to make another abstain from doing a legal act, nor is it compulsion to issue a bill asking union men to boycott a particular person, but to issue a general "black list" of non-union men, apparently, is compulsion.

Section 16 of the 1875 Act declares that nothing in the Act shall apply to seamen or sea apprentices. The expression "seamen" means persons employed under and subject to the Merchant Shipping Acts, that is, every person (except masters and pilots) employed on board any ship. The exemption merely means that seamen cannot be made liable to punishment under the Act; it does not prevent them from bringing an action. Similar offences, when committed by seamen, are punishable under the Merchant Shipping Act, 1894, with a fine of £10.

With regard to the offence of intimidation, the word "intimidate" is to be interpreted according to the circumstances which may arise from time to time, but in any event intimidation to become unlawful must at least be such as would justify a magistrate in binding over the intimidator to keep the peace towards the person intimidated. To constitute intimidation personal violence must be used. The intimidation used need not result in such compulsion as would induce serious apprehension of violence in a man of ordinary courage, if the intimidation is such as would justify a binding over of the intimidator to keep the peace. But an intimidating letter to an employer stating that his shop would be picketed, and couched in language so threatening as to make such employer afraid, does not amount to "intimidation." Nor is it intimidation within the reasonable construction of the statute to threaten an employer that workmen will be told to cease work, without, however, using violence. To

communicate to a master a resolution of a union as to the number of apprentices he might employ is not intimidation. The test is a subjective one.

As to the offence of "persistently following a person from place to place," a man must not be dodged from place to place, so as to interfere with his personal liberty to do what he likes. To follow another down two streets, and when he crosses the street to cross after him, without speaking to him, has been held to be an unlawful "persistent following." The essence of the offence is not the following of a person in a disorderly manner, but such a following as to prevent a person doing such acts as he has a right to do.

With regard to the offence of "watching and besetting," men have no right to watch or beset a house where a person happens to be, for the purpose of compelling him to abstain from doing that which he has a legal right to do. As to picketing generally, it would appear that, except where a trade dispute is in furtherance or contemplation, picketing may be illegal. Picketing, when it really means improper watching and besetting, is illegal. At the same time, picketing is not an offence unless it is shown that the pickets have wrongfully and without legal authority done some one or more of the five sets of acts specified above. "Watching and besetting," to be wrongful, need not be extended in time nor occur in a particular place; a mere attending may thus be wrongful under the 1875 Act; nor need the persons watched and beset be actually employed at the time.

Where a person employed by a body who have the duty of supplying any place with gas or water wilfully and maliciously breaks a contract of service with that body, knowing or having reasonable cause to believe that the probable consequence of his doing so will be to deprive the inhabitants of that place of gas or water, or where a person wilfully and maliciously breaks a contract, knowing that the probable consequences of his doing so will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he is liable either to be fined £20

or to be imprisoned for three months with hard labour. A person procuring such an offence is probably likewise guilty of a misdemeanour. The malice need not be directed against the owner of the property concerned.

Apart from the above provisions, it is to be noted that peaceful picketing is legalised. **The Trade Disputes Act provides that it shall be lawful for one or more persons, acting on their own behalf, or on behalf of a Trade Union, or of an individual employer or firm, in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.**

5. Conclusion.

In conclusion, it must have become increasingly obvious during the study of this subject that Trade Union law is both a difficult branch of law and a difficult task for the student of Trade Unionism to master.

It is obvious that sooner or later the whole mass of conflicting common law and statute which comprehend the subject must be codified, and it is in the hope that the Trade Unionist may be better equipped with knowledge to direct and control this work, and also to understand the subject in the meanwhile, that this little book has been written.

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